



JOHN ELIAS BALDACCI  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF CONSERVATION  
LAND USE REGULATION COMMISSION  
22 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0022

PATRICK MCGOWAN  
COMMISSIONER

## MEMORANDUM

April 24, 2009

**TO:** Commission Members  
**DEPT:** LURC  
**FROM:** *WAS*  
*for* Erle Townsend  
**DEPT:** LURC  
**SUBJECT:** Staff recommendation on Zoning Petition ZP 725, Thomas L. Messer and Marysia F. Messer, Albany Township, Oxford County

### Proposal

Thomas and Marysia Messer propose to rezone a portion of their 3.76 acre parcel on Route 5 and Mosquito Pond Road in Albany Township from (P-WL3) Wetland Protection Subdistrict to (M-GN) General Management Subdistrict to accommodate a proposed seasonal camp.

(M-GN) General Management Subdistrict would be the appropriate zone for the proposed activities. The proposed (M-GN) General Management Subdistrict is adjacent to another (M-GN) General Management Subdistrict. The petitioners have provided a detailed soils analysis and wetland delineation survey in support of the petition.

### Background

The 3.76 acre lot is undeveloped.

The petitioner has submitted an application for a Building Permit to construct a 20 foot by 20 foot camp on posts on a portion of the rezoned land. The development would include installation of a driveway and a combined sewage disposal system.

The proposed rezoning of 0.84 acres for the purpose of a small camp would have no undue adverse effect on the surrounding uses because the surrounding uses are primarily residences, logging, and gravel pits. The proposed development on the lot would not be visible from Route 5, and only partially visible from Mosquito Pond Road. Access would be via a proposed driveway from Mosquito Pond Road. The proposed development is more than 15 feet from the nearest side property boundary line, 50 feet from the road and 75 feet from the Crooked River.

### Review Criteria

Under the provisions of Section 10.08, A, of the Commission's Land Use Districts and Standards, a land use district boundary may not be adopted or amended unless there is substantial evidence that:

CATHERINE M. CARROLL, DIRECTOR

PHONE: (207) 287-2631  
FAX: (207) 287-7439  
TTY: (207) 287-2213

1. The proposed land use district is consistent with the standards for district boundaries in effect at the time, the comprehensive land use plan and the purpose, intent and provisions of this chapter; and
2. The proposed land use district satisfies a demonstrated need in the community or area and has no undue adverse impact on existing uses and resources or a new district designation is more appropriate for the protection and management of existing uses and resources within the affected area.

Under provisions of Section 10.22, A, 3, c, (20), of the Commission's Land Use Districts and Standards, single family residences are allowed in a (M-GN) General Management Subdistrict with a permit.

### **Staff Recommendation**

Staff recommends that the Commission approve Zoning Petition ZP 725 to rezone 0.84 acres from (P-WL3) Wetlands Protection Subdistrict to (M-GN) General Management Subdistrict, per the attached map. The proposal meets the standards for district boundaries, the Commission's Comprehensive Land Use Plan, and the purpose, intent, and provisions of 12 M.R.S.A., Chapter 206-A.

EST

Enclosures: Staff Recommendation

xc: ZP 725 File



JOHN ELIAS BALDACCI  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF CONSERVATION  
LAND USE REGULATION COMMISSION  
22 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0022

STAFF RECOMMENDATION  
Accepted \_\_\_\_\_ Accepted As Amended \_\_\_\_\_  
Reversed and Rewritten \_\_\_\_\_  
Tabled \_\_\_\_\_ Public Hearing \_\_\_\_\_

PATRICK MCGOWAN  
COMMISSIONER

## COMMISSION DECISION IN THE MATTER OF

Thomas L. and Marysia F. Messer

### Findings of Fact and Decision

#### ZONING PETITION ZP 725

The Maine Land Use Regulation Commission, at a meeting of the Commission held May 6, 2009, at Bangor, Maine, after reviewing the application and supporting documents submitted by Thomas L. and Marysia F. Messer for Zoning Petition ZP 725, public comments, agency review and staff comments and other related materials on file, pursuant to 12 M.R.S.A. Section 681 et seq. and the Commission's Standards and Rules, finds the following facts:

1. Petitioner: Thomas L. and Marysia F. Messer  
190 Goeletta Drive  
Hatchville, MA 02536
2. Authorized Agent: Donald E. Murphy  
New England Forestry Consultants, Inc.  
129 Bailey Road  
Bethel, ME 04217
3. Date of Completed Petition: March 11, 2009
4. Location of Proposal: Albany Township, Oxford County  
Lot #165.1 on Plan 01, Map OX016
5. Size of Parcel: 3.76 acres (owned)
6. Size of Parcel to be Rezoned: 0.84 acres
7. Present Zoning: (M-GN) General Management Subdistrict (1.22 acres)  
(P-WL3) Wetland Protection Subdistrict (1.24 acres)  
(P-SL2) Shoreland Protection Subdistrict (1.3 acres)
8. Proposed Zoning: (M-GN) General Management Subdistrict (2.06 acres)  
(P-WL3) Wetland Protection Subdistrict (0.40 acres)  
(P-SL2) Shoreland Protection Subdistrict (1.3 acres)

CATHERINE M. CARROLL, DIRECTOR

PHONE: (207) 287-2631  
FAX: (207) 287-7439  
TTY: (207) 287-2213

STAFF RECOMMENDATION

### Proposal

9. Thomas L. and Marysia F. Messer propose to rezone approximately 0.84 acres of their 3.76 acre lot from (P-WL3) Wetland Protection Subdistrict to (M-GN) General Management Subdistrict for the purpose of developing a seasonal camp. The petitioners have submitted an application for a Building Permit to develop a single-family residential dwelling to be served by a combined sewage disposal system within the 0.84 acres.

### Site Conditions

10. According to a wetlands delineation of the applicants' lot conducted by Main-Land Development Consultants, the area proposed for rezoning is not a wetland. The area proposed for rezoning includes an old roadbed and upland forest as identified in the wetland delineation report. The delineation was conducted in accordance with the "*Corps of Engineers Wetlands Delineation Manual (1987)*".

### Review Criteria

11. In accordance with 12 MRSA, Section 685-A, Subsection 8-A the Commission's Statutes, and under the provisions of Section 10.08, A, of the Commission's Land Use Districts and Standards, a land use district boundary may not be amended unless there is substantial evidence that:
  - a. The proposed land use district is consistent with the standards for district boundaries in effect at the time, the Comprehensive Land Use Plan and the purpose, intent and provisions of this chapter; and
  - b. The proposed land use district satisfies a demonstrated need in the community or area and has no undue adverse impact on existing uses or resources or a new district designation is more appropriate for the protection and management of existing uses and resources within the affected area.
12. Under provisions of Section 10.22, A, 1, of the Commission's Land Use Districts and Standards, the purpose of the (M-GN) General Management Subdistrict is to permit forestry and agricultural management activities to occur with minimal interferences from unrelated development in areas where the Commission finds that the resource protection afforded by Protection Subdistricts is not required.
13. Under provisions of Section 10.22, A, 3, c, (20), of the Commission's Land Use Districts and Standards, single-family and two-family dwellings are allowed uses in a (M-GN) General Management Subdistrict with a permit.

### Review Comments

14. The Maine Department of Inland Fisheries and Wildlife has reviewed the proposed rezoning and has no comment.
15. The Maine State Soil Scientist has been on site and has no objection to the rezoning. He concurs with the petitioner's determination that the area of the proposed rezoning does not qualify as a wetland.

16. The Natural Areas Program has reviewed the proposed rezoning and has no objections.
17. The Oxford County Commissioners have no objections to the proposal.
18. The facts are otherwise as represented in Zoning Petition ZP 725 and supporting documents.

Based on the above Findings, the Commission concludes that:

1. The proposed rezoning from (P-WL) Wetland Protection Subdistrict to (M-GN) General Management Subdistrict is consistent with the standards for district boundaries set forth in Section 10.22, A, 1, of the Commission's Land Use Districts and Standards, and the Commission's Comprehensive Land Use Plan. The area proposed for rezoning does not meet the criteria for designation as (P-WL3) Wetland Protection Subdistrict and should be rezoned to (M-GN) General Management Subdistrict. Specifically, the new district designation is more appropriate for the management of existing uses and resources within the affected area because the subject area does not contain wetland resources requiring special protection under the Commission's Land Use Districts and Standards, and it meets the purposes, description and land use standards for the (M-GN) General Management Subdistrict for which it is proposed.
2. The proposed rezoning of 0.84 acres from (P-WL3) Wetland Protection Subdistrict to (M-GN) General Management Subdistrict would be consistent with the standards for district boundaries, the Comprehensive Land Use Plan, and the purpose, intent, and provisions of 12 M.R.S.A., Chapter 206-A.

**Therefore, the Commission APPROVES the petition of Thomas L. and Marysia F. Messer to rezone 0.84 acres from (P-WL3) Wetland Protection Subdistrict to (M-GN) General Management Subdistrict per the attached map.**

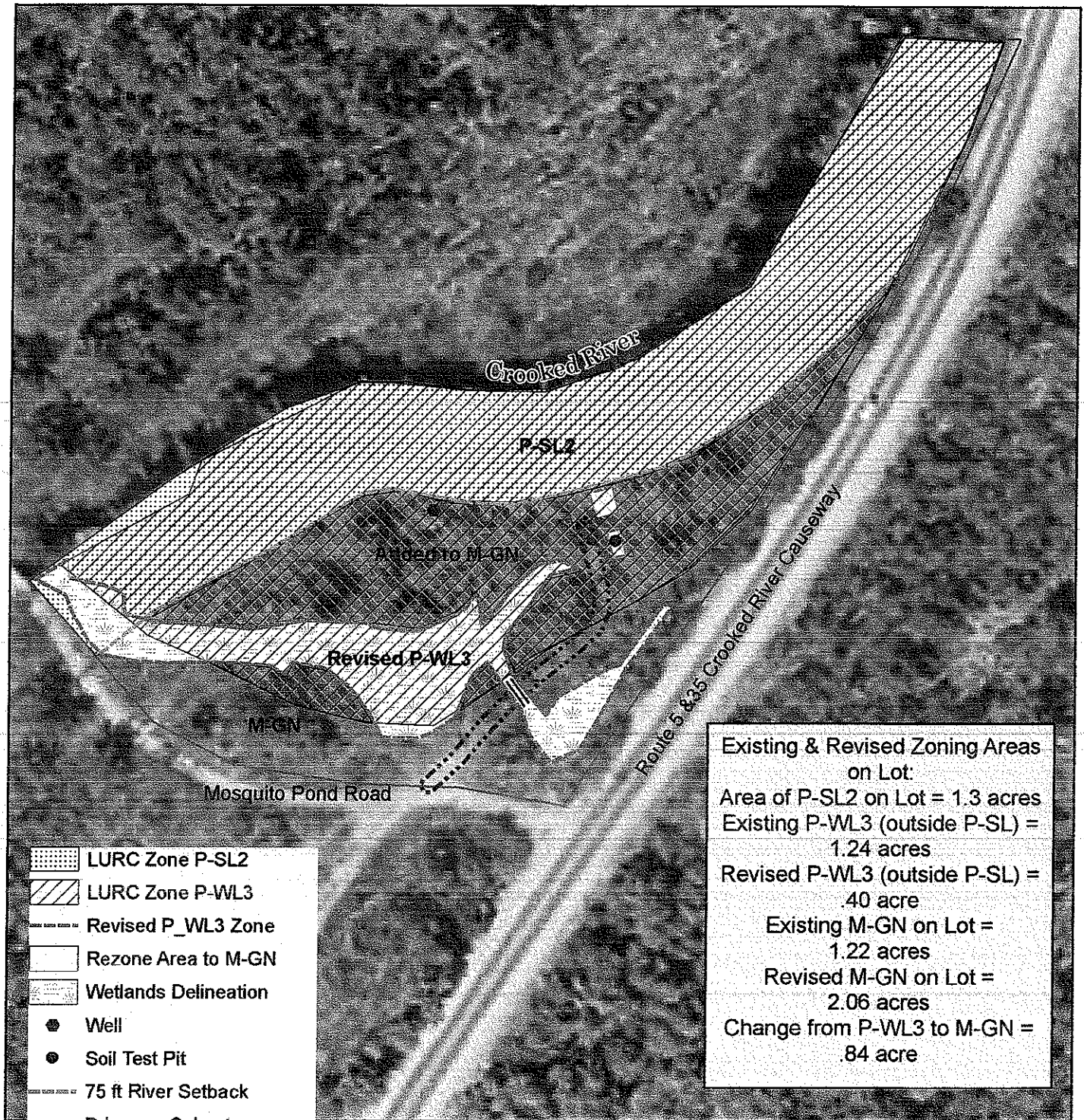
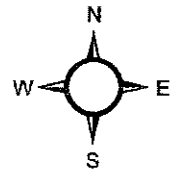
In accordance with 5 M.R.S.A. Section 11002 and Maine Rules of Civil Procedure 80C, this decision by the Commission may be appealed to Superior Court within 30 days after receipt of notice of the decision by a party to this proceeding, or within 40 days from the date of the decision by any other aggrieved person. In addition, where this decision has been made without a public hearing, any aggrieved person may request a hearing by filing a request in writing with the Commission within 30 days of the date of the decision.

DONE AND DATED AT BANGOR, MAINE THIS SIXTH DAY OF MAY, 2009.

By: \_\_\_\_\_  
Catherine M. Carroll, Director

This change in subdistrict designation is effective on May 21, 2009.





**Existing & Revised Zoning Areas  
 on Lot:**  
 Area of P-SL2 on Lot = 1.3 acres  
 Existing P-WL3 (outside P-SL) =  
 1.24 acres  
 Revised P-WL3 (outside P-SL) =  
 .40 acre  
 Existing M-GN on Lot =  
 1.22 acres  
 Revised M-GN on Lot =  
 2.06 acres  
 Change from P-WL3 to M-GN =  
 .84 acre

- LURC Zone P-SL2
- LURC Zone P-WL3
- Revised P\_WL3 Zone
- Rezone Area to M-GN
- Wetlands Delineation
- Well
- Soil Test Pit
- 75 ft River Setback
- Driveway Culvert
- Proposed Driveway
- Septic Leach Field
- Building Envelope
- Cabin Footprint
- Approximate Parcel Line

1 inch = 100 feet

NOT A BOUNDARY SURVEY;  
 for planning purposes only  
 December 1, 2008  
 Revised April 8, 2009

Data Sources: Aerial Photo,  
 USGS Contours, NWI, E911 Rds  
 ME OGIS, LURC Parcel Viewer  
 GPS by Wetlands Scientist

Donald E. Murphy  
 New England Forestry Consultants  
 129 Bailey Road  
 Bethel, ME 04217  
 (207) 824-8733